

MONTANA LEGISLATIVE HISTORY

Chapter 249 1989

Bill H _____ S 27 Original bill & history 4 c

H. Committee on Bus. + Econ. Dev.

Hearing Date(s) 3/1 4 c

_____ c

_____ c

_____ c

Date Out _____ c

S. Committee on Bus. + Ind.

Hearing Date(s) 1/6 4 c

_____ c

_____ c

_____ c

Did this bill originate in an interim committee? _____ Yes 4 No

Committee _____

Report _____

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SENATE FINAL STATUS

EFFECTIVE DATE: 10/01/89 (S1, 2, 5, 7-12,
14-22)

EFFECTIVE DATE: 03/15/89 (S3, 4, 6, 13, 23)

SB 27 INTRODUCED BY MEYER
GENERALLY REVISE SECURITIES LAWS
BY REQUEST OF STATE AUDITOR

1/02	INTRODUCED		
1/02	REFERRED TO BUSINESS & INDUSTRY		
1/06	HEARING		
1/07	COMMITTEE REPORT--BILL PASSED		
1/10	2ND READING PASSED	49	0
1/12	3RD READING PASSED	48	0

	TRANSMITTED TO HOUSE		
2/21	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT		
3/01	HEARING		
3/02	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/04	2ND READING CONCURRED	75	4
3/06	3RD READING CONCURRED	87	6

	RETURNED TO SENATE WITH AMENDMENTS		
3/08	2ND READING AMENDMENTS CONCURRED	49	0
3/11	3RD READING AMENDMENTS CONCURRED	48	0

3/16	SIGNED BY PRESIDENT		
3/16	SIGNED BY SPEAKER		
3/17	TRANSMITTED TO GOVERNOR		
3/23	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 249 EFFECTIVE DATE: 3/22/89		

SB 28 INTRODUCED BY MEYER
CLARIFY DEFINITION OF VETERINARY MEDICINE

1/02	INTRODUCED		
1/02	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIG.		
1/06	HEARING		
2/16	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/20	2ND READING PASSED	50	0
2/21	3RD READING PASSED	50	0

	TRANSMITTED TO HOUSE		
2/22	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIG.		
3/08	HEARING		
3/08	TABLED IN COMMITTEE		

SB 29 INTRODUCED BY GAGE
PROVIDE RULEMAKING AUTHORITY TO BOARD OF OIL AND GAS
FOR SEISMIC SHOT HOLES
BY REQUEST OF DEPARTMENT OF NATURAL RESOURCES &
CONSERVATION

1/03	INTRODUCED		
1/03	REFERRED TO NATURAL RESOURCES		
1/11	HEARING		
1/13	COMMITTEE REPORT--BILL PASSED		
1/16	2ND READING PASSED	48	0
1/18	3RD READING PASSED	48	0

SENATE BILL NO. 27

INTRODUCED BY MEYER

BY REQUEST OF THE STATE AUDITOR

IN THE SENATE

JANUARY 2, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
	FIRST READING.
JANUARY 7, 1989	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
JANUARY 9, 1989	PRINTING REPORT.
JANUARY 10, 1989	SECOND READING, DO PASS.
JANUARY 11, 1989	ENGROSSING REPORT.
JANUARY 12, 1989	THIRD READING, PASSED. AYES, 48; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

JANUARY 12, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT.
FEBRUARY 20, 1989	FIRST READING.
MARCH 2, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 4, 1989	SECOND READING, CONCURRED IN.
MARCH 6, 1989	THIRD READING, CONCURRED IN. AYES, 87; NOES, 6.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

MARCH 8, 1989

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS
CONCURRED IN.

MARCH 10, 1989

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

SENATE BILL NO. 27

INTRODUCED BY MEYER

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL
REVISION OF THE SECURITIES ACT OF MONTANA; AMENDING SECTIONS
30-10-103, 30-10-104, 30-10-201, 30-10-210, AND 30-10-305,
MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-10-103, MCA, is amended to read:

"30-10-103. Definitions. When used in parts 1 through
3 of this chapter, unless the context requires otherwise,
the following definitions apply:

(1) "Commissioner" means securities commissioner of
this state.

(2) "Salesman" means any individual other than a
broker-dealer who represents a broker-dealer or issuer in
effecting or attempting to effect sales of securities. A
partner, officer, or director of a broker-dealer or issuer
is a salesman only if he otherwise comes within this
definition. "Salesman" does not include an individual who
represents an issuer in:

(a) effecting a transaction in a security exempted by
subsections (1), (2), (3), (8), (9), (10), or (11) of

30-10-104;

(b) effecting transactions exempted by 30-10-105; or

(c) effecting transactions with existing employees,
partners, or directors of the issuer if no commission or
other remuneration is paid or given directly or indirectly
for soliciting any person in this state.

(3) "Broker-dealer" means any person engaged in the
business of effecting transactions in securities for the
account of others or for his own account. "Broker-dealer"
does not include:

(a) a salesman, issuer, bank, savings institution,
trust company, or insurance company; or

(b) a person who has no place of business in this
state if he effects transactions in this state exclusively
with or through the issuers of the securities involved in
the transactions, other broker-dealers, or banks, savings
institutions, trust companies, insurance companies,
investment companies as defined in the Investment Company
Act of 1940, pension or profit-sharing trusts, or other
financial institutions or institutional buyers, whether
acting for themselves or as trustee.

(4) "Registered broker-dealer" means a broker-dealer
registered pursuant to 30-10-201.

(5) (a) "Commodity" means:

(i) any agricultural, grain, or livestock product or

1 byproduct;

2 (ii) any metal or mineral, including a precious metal,
3 or any gem or gem stone, whether characterized as precious,
4 semiprecious, or otherwise;

5 (iii) any fuel, whether liquid, gaseous, or otherwise;

6 (iv) foreign currency; and

7 (v) all other goods, articles, products, or items of
8 any kind.

9 (b) Commodity does not include:

10 (i) a numismatic coin with a fair market value at
11 least 15% higher than the value of the metal it contains;

12 (ii) real property or any timber, agricultural, or
13 livestock product grown or raised on real property and
14 offered and sold by the owner or lessee of such real
15 property; or

16 (iii) any work of art offered or sold by an art dealer
17 at public auction or offered or sold through a private sale
18 by the owner.

19 (6) "Commodity Exchange Act" means the federal statute
20 of that name as amended on the effective date of this
21 subsection.

22 (7) "Commodity futures trading commission" means the
23 independent regulatory agency established by congress to
24 administer the Commodity Exchange Act.

25 (8) (a) "Commodity investment contract" means any

1 account, agreement, or contract for the purchase or sale,
2 primarily for speculation or investment purposes and not for
3 use or consumption by the offeree or purchaser, of one or
4 more commodities, whether for immediate or subsequent
5 delivery or whether delivery is intended by the parties, and
6 whether characterized as a cash contract, deferred shipment
7 or deferred delivery contract, forward contract, futures
8 contract, installment or margin contract, leverage contract,
9 or otherwise. Any commodity investment contract offered or
10 sold, in the absence of evidence to the contrary, is
11 presumed to be offered or sold for speculation or investment
12 purposes.

13 (b) A commodity investment contract does not include a
14 contract or agreement that requires, and under which the
15 purchaser receives, within 28 calendar days after the
16 payment in good funds of any portion of the purchase price,
17 physical delivery of the total amount of each commodity to
18 be purchased under the contract or agreement.

19 (9) (a) "Commodity option" means any account,
20 agreement, or contract giving a party to the account,
21 agreement, or contract the right but not the obligation to
22 purchase or sell one or more commodities or one or more
23 commodity contracts, whether characterized as an option,
24 privilege, indemnity, bid, offer, put, call, advance
25 guaranty, decline guaranty, or otherwise.

(b) The term does not include an option traded on a national securities exchange registered with the U.S. securities and exchange commission.

(10) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(11) (a) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

(b) The term includes a financial planner or other person who:

(i) as an integral component of other financially related services, provides the investment advisory services described in subsection (11)(a) to others for compensation, as part of a business; or

(ii) represents himself as providing the investment advisory services described in subsection (11)(a) to others for compensation.

(c) Investment adviser does not include:

(i) an investment adviser representative;

(ii) a bank, savings institution, trust company, or insurance company;

(iii) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession;

(iv) a registered broker-dealer;

(v) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form or by electronic means or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

(vi) a person whose advice, analyses, or reports relate only to securities exempted by 30-10-104(1); or

(vii) such other persons not within the intent of this subsection (11) as the commissioner may by rule or order designate.

(12) (a) "Investment adviser representative" means any partner of, officer of, director of, or a person occupying a similar status or performing similar functions, or other individual employed by or associated with an investment adviser, except clerical or ministerial personnel, who:

(i) makes any recommendation or otherwise renders advice regarding securities to clients;

(ii) manages accounts or portfolios of clients;

(iii) solicits, offers, or negotiates for the sale or sells investment advisory services; or

1 (iv) supervises employees who perform any of the
2 foregoing.

3 (b) Investment adviser representative does not include
4 an individual registered as a salesman pursuant to
5 30-10-201.

6 (13) "Issuer" means any person who issues or proposes
7 to issue any security, except that with respect to
8 certificates of deposit, voting-trust certificates, or
9 collateral-trust certificates or with respect to
10 certificates of interest or shares in an unincorporated
11 investment trust not having a board of directors (or persons
12 performing similar functions) or of the fixed, restricted
13 management, or unit type, the term "issuer" means the person
14 or persons performing the acts and assuming the duties of
15 depositor or manager pursuant to the provisions of the trust
16 or other agreement or instrument under which the security is
17 issued.

18 (14) "Nonissuer" means not directly or indirectly for
19 the benefit of the issuer.

20 (15) "Person", for the purpose of parts 1 through 3 of
21 this chapter, means an individual, a corporation, a
22 partnership, an association, a joint-stock company, a trust
23 where the interests of the beneficiaries are evidenced by a
24 security, an unincorporated organization, a government, or a
25 political subdivision of a government.

1 (16) "Precious metal" means the following, in coin,
2 bullion, or other form:

3 (a) silver;

4 (b) gold;

5 (c) platinum;

6 (d) palladium;

7 (e) copper; and

8 (f) such other items as the commissioner may by rule
9 or order specify.

10 (17) (a) "Sale" or "sell" includes every contract of
11 sale of, contract to sell, or disposition of a security or
12 interest in a security for value.

13 (b) "Offer" or "offer to sell" includes every attempt
14 or offer to dispose of or solicitation of an offer to buy a
15 security or interest in a security for value.

16 (c) Any security given or delivered with or as a bonus
17 on account of any purchase of securities or any other thing
18 is considered to constitute part of the subject of the
19 purchase and to have been offered and sold for value. A
20 purported gift of assessable stock is considered to involve
21 an offer and sale. Every sale or offer of a warrant or right
22 to purchase or subscribe to another security of the same or
23 another issuer, as well as every sale or offer of a security
24 which gives the holder a present or future right or
25 privilege to convert into another security of the same or

another issuer, is considered to include an offer of the other security.

(18) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", "Investment Advisors Act of 1940", and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after July 1, 1961.

(19) "Security" means any note; stock; treasury stock; bond; commodity investment contract; commodity option; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable shares; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a security or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a sum of money either in a lump sum or periodically for life or some other specified

period.

(20) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

(21) "Transact", "transact business", or "transaction" includes the meanings of the terms "sale", "sell", and "offer".

Section 2. Section 30-10-104, MCA, is amended to read:

"30-10-104. Exempt securities. Sections 30-10-202 through 30-10-207 do not apply to any of the following securities:

(1) any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; provided, however, 30-10-202 through 30-10-207 apply to a security issued by any of the foregoing that is payable solely from payments to be received in respect of property or money used under a lease, sale, or loan arrangement by or for a nongovernmental industrial or commercial enterprise, unless such enterprise or any security of which it is the issuer is within any of the exemptions enumerated in subsections (2) through (13) of this section;

(2) any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such

1 province, or any agency or corporate or other
2 instrumentality of one or more of the foregoing or any other
3 foreign government with which the United States currently
4 maintains diplomatic relations if the security is recognized
5 as a valid obligation by the issuer or guarantor;

6 (3) any security issued by and representing an
7 interest in or a debt of or guaranteed by any bank organized
8 under the laws of the United States or any bank, savings
9 institution, or trust company organized and supervised under
10 the laws of any state;

11 (4) any security issued by and representing an
12 interest in or a debt of or guaranteed by any federal
13 savings and loan association or any building and loan or
14 similar association organized under the laws of any state
15 and authorized to do business in this state;

16 (5) any security issued or guaranteed by any federal
17 credit union or any credit union, industrial loan
18 association, or similar association organized and supervised
19 under the laws of this state;

20 (6) any security issued or guaranteed by any railroad,
21 other common carrier, public utility, or holding company
22 which is:

23 (a) subject to the jurisdiction of the interstate
24 commerce commission;

25 (b) a registered holding company under the Public

1 Utility Holding Company Act of 1935 or a subsidiary of such
2 a company within the meaning of that act;

3 (c) regulated in respect of its rates and charges by a
4 governmental authority of the United States or any state or
5 municipality; or

6 (d) regulated in respect to the issuance or guarantee
7 of the security by a governmental authority of the United
8 States, any state, Canada, or any Canadian province; also
9 equipment trust certificates in respect to equipment
10 conditionally sold or leased to a railroad or public utility
11 if other securities issued by such railroad or public
12 utility would be exempt under this subsection;

13 (7) any security that meets all of the following
14 conditions:

15 (a) if the issuer is not organized under the laws of
16 the United States or a state, it has appointed a duly
17 authorized agent in the United States for service of process
18 and has set forth the name and address of such agent in its
19 prospectus;

20 (b) a class of the issuer's securities is required to
21 be and is registered under section 12 of the Securities
22 Exchange Act of 1934 and has been so registered for the 3
23 years immediately preceding the offering date;

24 (c) neither the issuer nor a significant subsidiary
25 has had a material default during the last 7 years (or the

1 issuer's existence if less than 7 years) in the payment of:

2 (i) principal, interest, dividend, or sinking fund
3 installment on preferred stock or indebtedness for borrowed
4 money; or

5 (ii) rentals under leases with terms of 3 years or
6 more;

7 (d) the issuer has had consolidated net income (before
8 extraordinary items and the cumulative effect of accounting
9 changes) of at least \$1 million in 4 of its last 5 fiscal
10 years, including its last fiscal year; and if the offering
11 is of interest-bearing securities, has had for its last
12 fiscal year such net income, but before deduction for income
13 taxes and depreciation, of at least 1 1/2 times the issuer's
14 annual interest expense, giving effect to the proposed
15 offering and the intended use of the proceeds. "Last fiscal
16 year" as used in this subsection (7)(d), means the most
17 recent year for which audited financial statements are
18 available, provided that such statements cover a fiscal
19 period ended not more than 15 months from the commencement
20 of the offering.

21 (e) if the offering is of stock or shares, other than
22 preferred stock or shares, such securities have voting
23 rights and such rights include the right to have at least as
24 many votes per share and the right to vote on at least as
25 many general corporate decisions as each of the issuer's

1 outstanding classes of stock or shares, except as otherwise
2 required by law;

3 (f) if the offering is of stock or shares, other than
4 preferred stock or shares, such securities are owned
5 beneficially or of record on any date within 6 months prior
6 to the commencement of the offering by at least 1,200
7 persons and on such date there are at least 750,000 such
8 shares outstanding with an aggregate market value, based on
9 the average bid price for that day, of at least \$3,750,000.

10 In connection with the determination of the number of
11 persons who are beneficial owners of the stock or shares of
12 an issuer, the issuer or broker-dealer may rely in good
13 faith for the purposes of this section upon written
14 information furnished by the record owners.

15 (8) any security issued by any person organized and
16 operated not for private profit but exclusively for
17 religious, educational, benevolent, charitable, fraternal,
18 social, athletic, or reformatory purposes if the issuer pays
19 a fee of \$50 and files with the commissioner 20 days prior
20 to the offering a written notice specifying the terms of the
21 offer and the commissioner does not disallow the exemption
22 in writing within such 20-day period;

23 (9) any commercial paper which arises out of a current
24 transaction or the proceeds of which have been or are to be
25 used for current transaction and which evidences an

obligation to pay cash within 9 months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited or any guarantee of such paper or of any such renewal, when such commercial paper is sold to the banks or insurance companies;

(10) any investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan;

(11) any security for which the commissioner determines by order that an exemption would better serve the purposes of 30-10-102 than would registration. The fee for this exemption must be as prescribed in 30-10-209(4).

(12) any security listed or approved for listing upon notice of issuance on the New York stock exchange, the American stock exchange, the Pacific stock exchange, the Midwest stock exchange, or any other stock exchange registered with the federal securities and exchange commission and approved by the commissioner; any other security of the same issuer that is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing;

(13) any national market system security listed or approved for listing upon notice of issuance on the national

association of securities dealers automated quotation system or any other national quotation system approved by the commissioner; any other security of the same issuer that is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the securities listed in this subsection."

Section 3. Section 30-10-201, MCA, is amended to read:

"30-10-201. Registration of broker-dealers, salesmen, investment advisers, and investment adviser representatives.

(1) It is unlawful for any a person to transact business in this state as a broker-dealer or salesman, except in ~~transactions-exempt-under~~ as provided in 30-10-105, unless he is registered under parts 1 through 3 of this chapter.

(2) It is unlawful for a broker-dealer or issuer to employ a salesman to represent him in this state, except in transactions exempt under 30-10-105, unless the salesman is registered under parts 1 through 3 of this chapter.

(3) It is unlawful for any person to transact business in this state as an investment adviser or as an investment adviser representative unless:

(a) he is so registered under parts 1 through 3 of this chapter;

(b) he is registered as a broker-dealer under parts 1 through 3 of this chapter;

(c) his only clients in this state are:

(i) investment companies, as defined in the Investment Company Act of 1940, or insurance companies;

(ii) other investment advisers;

(iii) broker-dealers;

(iv) banks;

(v) trust companies;

(vi) savings and loan associations;

(vii) employee benefit plans with assets of not less than \$1 million;

(viii) governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control; or

(ix) other institutional investors as are designated by rule or order of the commissioner; or

(d) he has no place of business in this state and during any 12 consecutive months does not direct business communications in this state in any manner to more than five present or prospective clients, other than those specified in subsection (3)(c), whether or not he or any of the persons to whom the communications are directed are then present in this state.

(4) A broker-dealer or a salesman, acting as an agent for an issuer or as an agent for a broker-dealer in the offer or sale of securities for an issuer, or an investment

adviser or investment adviser representative may apply for registration by filing an application in such form as the commissioner prescribes and payment of the fee prescribed in 30-10-209. A salesman acting as agent for an issuer or broker-dealer who is not currently in compliance with the financial responsibility requirements prescribed by the Securities Exchange Act of 1934 and by regulations adopted under it, may, in the discretion of the commissioner, be required to file with the commissioner a bond of a surety company duly authorized to transact business in this state. The bond shall be in an amount determined by the commissioner, payable to the state of Montana and conditioned upon the faithful compliance with the provisions of parts 1 through 3 of this chapter, and provide that upon failure to so comply, the salesman shall be liable to any and all persons who may suffer loss by reason thereof.

(5) The application shall contain whatever information the commissioner requires. No registration application of a broker-dealer, salesman, investment adviser, or investment adviser representative may be withdrawn before the commissioner approves or denies such registration, without the express written consent of the commissioner.

(6) When the registration requirements are met, the commissioner shall make the registration effective. No effective registration of a broker-dealer, salesman,

investment adviser, or investment adviser representative may be withdrawn or terminated without the express written consent of the commissioner.

(7) Registration Except as provided in subsection (6), registration of a broker-dealer, salesman, investment adviser, or investment adviser representative ~~shall be:~~

(a) is effective until December 31 following such registration or such other time as the commissioner may by rule adopt; and

(b) may be renewed.

(8) The registration of a salesman is not effective during any period when he is not associated with an issuer or a registered broker-dealer specified in his application. When a salesman begins or terminates a connection with an issuer or registered broker-dealer, the salesman and the issuer or broker-dealer shall promptly notify the commissioner.

(9) The registration of an investment adviser representative is not effective during any period when he is not associated with an investment adviser registered under this act and specified in the application. When an investment adviser representative begins or terminates a connection with an investment adviser, the investment adviser shall promptly notify the commissioner.

(10) Registration of a broker-dealer, salesman,

investment adviser, or investment adviser representative may be renewed by filing, prior to the expiration thereof, an application containing such information as the commissioner may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, salesman, investment adviser, or investment adviser representative filed by the applicant, payment of the prescribed fee, and, in the case of a broker-dealer who is not a member of NASD, inc., by filing a financial statement showing the financial condition of such broker-dealer as of a date within 90 days. A registered broker-dealer or investment adviser may file an application for registration of a successor, to become effective upon approval of the commissioner.

(11) Every registered broker-dealer and investment adviser shall make and keep such accounts and other records, except with respect to securities exempt under 30-10-104(1), as may be prescribed by the commissioner. All records so required shall be preserved for 3 years unless the commissioner prescribes otherwise for particular types of records. All the records of a registered broker-dealer or investment adviser are subject at any time or from time to time to such reasonable periodic, special, or other examinations, within or without this state, by

1 representatives of the commissioner, as the commissioner
2 considers necessary or appropriate in the public interest or
3 for the protection of investors.

4 (12) The commissioner may by order deny, suspend, or
5 revoke registration of any broker-dealer, salesman,
6 investment adviser, or investment adviser representative if
7 he finds that the order is in the public interest and that
8 the applicant or registrant or, in the case of a
9 broker-dealer or investment adviser, any partner, officer,
10 or director:

11 (a) has filed an application for registration under
12 this section which, as of its effective date or as of any
13 date after filing in the case of an order denying
14 effectiveness, was incomplete in any material respect or
15 contained any statement which was, in the light of the
16 circumstances under which it was made, false or misleading
17 with respect to any material fact;

18 (b) has willfully violated or willfully failed to
19 comply with any provision of parts 1 through 3 of this
20 chapter or a predecessor law or any rule or order under
21 parts 1 through 3 of this chapter or a predecessor law;

22 (c) has been convicted of any misdemeanor involving a
23 security or any aspect of the securities business or any
24 felony;

25 (d) is permanently or temporarily enjoined by any

1 court of competent jurisdiction from engaging in or
2 continuing any conduct or practice involving any aspect of
3 the securities business;

4 (e) is the subject of an order of the commissioner
5 denying, suspending, or revoking registration as a
6 broker-dealer, salesman, investment adviser, or investment
7 adviser representative;

8 (f) is the subject of an adjudication or
9 determination, within the past 5 years, by a securities or
10 commodities agency or administrator of another state or a
11 court of competent jurisdiction, that the person has
12 violated the Securities Act of 1933, the Securities Exchange
13 Act of 1934, the Investment Advisors Act of 1940, the
14 Investment Company Act of 1940, or the Commodity Exchange
15 Act or the securities or commodities law of any other state;

16 (g) has engaged in dishonest or unethical practices in
17 the securities business;

18 (h) is insolvent, either in the sense that his
19 liabilities exceed his assets or in the sense that he cannot
20 meet his obligations as they mature, but the commissioner
21 may not enter an order against a broker-dealer or investment
22 adviser under this subsection (h) without a finding of
23 insolvency as to the broker-dealer or investment adviser;

24 (i) has not complied with a condition imposed by the
25 commissioner under this section or is not qualified on the

basis of such factors as training, experience, or knowledge of the securities business;

(j) has failed to pay the proper filing fee, but the commissioner may enter only a denial order under this subsection (j), and he shall vacate any such order when the deficiency has been corrected; or

(k) has failed to reasonably supervise his salesmen or employees, if he is a broker-dealer, or his investment adviser representatives or employees, if he is an investment adviser, to assure their compliance with this act.

(13) The commissioner may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to him when registration became effective unless the proceeding is instituted within 30 days after the date on which the registration became effective.

(14) The commissioner may by order summarily postpone or suspend registration pending final determination of any proceeding under this section.

(15) Upon the entry of the order under subsection (12) of this section, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesman or investment adviser representative, that it has been entered and of the reasons therefor and that if requested by the applicant or registrant within 15 days

after the receipt of the commissioner's notification the matter will be promptly set down for hearing. If no hearing is requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

(16) If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, salesman, investment adviser, salesman, or investment adviser representative or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian or cannot be located after reasonable search, the commissioner may by order cancel the registration or application.

(17) The commissioner may, after suspending or revoking registration of any broker-dealer, salesman, investment adviser, or investment adviser representative, impose a fine not to exceed \$5,000 upon such broker-dealer, salesman, investment adviser, or investment adviser representative. The fine is in addition to all other penalties imposed by the laws of this state and must be collected by the commissioner in the name of the state of Montana and

deposited in the general fund. Imposition of any fine under this subsection is an order from which an appeal may be taken pursuant to 30-10-308. If any broker-dealer, salesman, investment adviser, or investment adviser representative fails to pay a fine referred to in this subsection, the amount of the fine is a lien upon all of the assets and property of such broker-dealer, salesman, investment adviser, or investment adviser representative in this state and may be recovered by suit by the commissioner and deposited in the general fund. Failure of a broker-dealer, salesman, investment adviser, or investment adviser representative to pay a fine also constitutes a forfeiture of his right to do business in this state under parts 1 through 3 of this chapter."

Section 4. Section 30-10-210, MCA, is amended to read:

"30-10-210. Examination costs. (1) Any An issuer or, broker-dealer, or investment adviser who is examined in connection with a registration under parts 1 through 3 of this chapter shall reimburse the commissioner or any of his duly authorized agents, officers, or employees for actual travel expenses, a reasonable living expense allowance, and a per diem as compensation of examiners, as necessarily incurred on account of the examination, upon presentation of a detailed account of such charges and expenses by the commissioner or pursuant to his written authorization;

however, no reimbursement of expenses may be required for routine examinations performed in connection with an application for registration. No person ~~shall~~ may pay and no examiner ~~shall~~ may accept any additional emolument on account of any such an examination.

(2) The commissioner shall pay to the state treasurer to the credit of the general fund all moneys received hereunder. The commissioner may give written authorization for payment of the examination costs referred to in subsection (1) by the person examined directly to the examiner.

(3) If any an issuer or, broker-dealer, or investment adviser fails to pay the charges and expenses referred to above, the same shall be paid out of the funds of the commissioner in the same manner as other disbursements of such funds. The amount so paid ~~shall be~~ is a first lien upon all of the assets and property in this state of such the issuer or, broker-dealer, or investment adviser and may be recovered by suit by the attorney general on behalf of the state of Montana and restored to the appropriate fund. Failure of such the issuer or, broker-dealer, or investment adviser to pay such the charges and expenses ~~shall~~ also work works a forfeiture of his or its right to do business in this state under parts 1 through 3 of this chapter."

Section 5. Section 30-10-305, MCA, is amended to read:

1 "30-10-305. Injunctions and other remedies --
2 limitations on actions. (1) If it appears to the
3 commissioner that any person has engaged or is about to
4 engage in any act or practice constituting a violation of
5 any provision of parts 1 through 3 of this chapter or any
6 rule or order hereunder, he may in his discretion:

7 (a) issue an order directing the person to cease and
8 desist from continuing the act or practice after reasonable
9 notice and opportunity for a hearing. The commissioner may
10 issue a temporary order pending the hearing that remains in
11 effect until 10 days after the hearing on the allegations
12 contained in the cease and desist order is held or that
13 becomes final if the person to whom notice is addressed does
14 not request a hearing within 15 days after receipt of the
15 notice; or

16 (b) without the issuance of a cease and desist order,
17 bring an action in any court of competent jurisdiction to
18 enjoin any such acts or practices and to enforce compliance
19 with parts 1 through 3 of this chapter or any rule or order
20 hereunder. Upon a proper showing, a permanent or temporary
21 injunction, restraining order, or writ of mandamus shall be
22 granted and a receiver or conservator may be appointed for
23 the defendant or the defendant's assets. The commissioner
24 may not be required to post a bond. If the commissioner
25 prevails, he is entitled to reasonable attorneys' fees as

1 fixed by the court.

2 (2) A final judgment or decree, criminal or civil,
3 determining that a person has violated parts 1 through 3 of
4 this chapter in an action brought by the commissioner for
5 such violation, other than a consent judgment or decree
6 entered before trial, is prima facie evidence against that
7 person in an action brought against him under 30-10-307.

8 (3) The commissioner may, after giving reasonable
9 notice and an opportunity for a hearing under this section,
10 impose a fine not to exceed \$5,000 per violation upon a
11 person found to have engaged in any act or practice
12 constituting a violation of any provision of parts 1 through
13 3 of this chapter or any rule or order issued under parts 1
14 through 3 of this chapter. The fine is in addition to all
15 other penalties imposed by the laws of this state and must
16 be collected by the commissioner in the name of the state of
17 Montana and deposited in the general fund. Imposition of any
18 fine under this subsection is an order from which an appeal
19 may be taken pursuant to 30-10-308. If any person fails to
20 pay a fine referred to in this subsection, the amount of the
21 fine is a lien upon all of the assets and property of such
22 person in this state and may be recovered by suit by the
23 commissioner and deposited in the general fund. Failure of
24 the person to pay a fine also constitutes a forfeiture of
25 his right to do business in this state under parts 1 through

1 3 of this chapter.

2 (4) (a) No An administrative or civil action may not
3 be maintained by the commissioner under this section to
4 enforce any a liability founded on a violation of
5 30-10-201(1) through ~~30-10-205~~ 30-10-201(3) or 30-10-202
6 unless it is brought within 2 years after the violation
7 occurs.

8 (b) No An administrative or civil action may not be
9 maintained by the commissioner under this section to enforce
10 any a liability founded on a violation of parts 1 through 3
11 of this chapter or any rule or order issued thereunder,
12 except 30-10-201(1) through ~~30-10-205~~ 30-10-201(3) and
13 30-10-202, unless it is brought within 2 years after
14 discovery by the commissioner or his staff of the facts
15 constituting the violation.

16 (c) In no event may an action be maintained under this
17 section to enforce any liability founded on a violation of
18 parts 1 through 3 of this chapter or any rule or order
19 issued thereunder unless it is brought within 5 years after
20 the transaction on which the action is based."

21 **Section 6. Extension of authority.** Any existing
22 authority to make rules on the subject of the provisions of
23 [this act] is extended to the provisions of [this act].

24 **Section 7. Effective date.** [This act] is effective on
25 passage and approval.

-End-

-29-

Senate Bills

STATUS SHEET

51st LEGISLATIVE SESSION

Business & Industry

COMMITTEE

BILL NUMBER	ENTERED COM. DATE	DATE CON- SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON- CURRED IN DATE	BE NOT CON- CURRED IN DATE	BE CON- CURRED IN AMENDED DATE	BE NOT CONCURRED IN AS AMENDED DATE
<i>SB 4</i>	<i>1/4</i>	<i>1/9/11</i>	<i>1/11</i>			<i>1/14/89</i>					
<i>SB 5</i>	<i>1/4</i>	<i>1/9</i>	<i>1/9</i>			<i>1/9/89</i>					
<i>SB 16</i>	<i>1/2</i>	<i>1/5</i>	<i>1/5</i>	<i>1/5/89</i>							
<i>SB 18</i>	<i>1/2</i>	<i>1/5</i>	<i>1/5</i>			<i>1/5/89</i>					
<i>SB 37</i>	<i>1/2</i>	<i>1/6</i>	<i>1/6/89</i>	<i>1/6/89</i>							
<i>SB 36</i>	<i>1/2</i>	<i>1/6 1/9</i>	<i>1/9/89</i>	<i>1/9/89</i>							
<i>SB 43</i>	<i>1/2</i>	<i>1/5 1/6</i>	<i>1/6/89</i>	<i>1/6/89</i>							
<i>SB 64</i>	<i>1/5</i>	<i>1/9 1/11</i>	<i>1/11/89</i>			<i>1/11/89</i>					
<i>SB 76</i>	<i>1/6</i>	<i>1/11</i>	<i>1/11</i>	<i>1/11</i>							
<i>SB 87</i>	<i>1/9</i>	<i>1/13 1/18 ex</i>	<i>1/18</i>			<i>1/18</i>					
<i>SB 98</i>	<i>1/11</i>	<i>1/17</i>	<i>1/20</i>	<i>1/20</i>							
<i>SB 115</i>	<i>1/13</i>	<i>1/18</i>	<i>1/26</i>			<i>1/26</i>					
<i>SB 137</i>	<i>1/14</i>	<i>1/19</i>	<i>1/19</i>			<i>1/19</i>					
<i>SB 138</i>	<i>1/14</i>	<i>1/19</i>	<i>1/19</i>	<i>1/19</i>							

se a separate sheet for Senate Bills, House Bills, and Resolutions.

won't receive the kind of information peace officers would be worried about.

Senator Hofman said he had a copy of the same letter, as attached to Tanya Ask's testimony, plus letters of support from various county attorneys. All of them urged passage of this bill.

DISPOSITION ON SENATE BILL 36

Discussion: Senator Meyer suggested the committee defer executive action on SB 36 until Monday's hearing, and have Mary investigate the existence and concerns of the possible second bill.

Hearing on SB 36 was closed. Executive action will be taken at a later date

HEARING ON SENATE BILL 27

Presentation and Opening Statement by Sponsor: Senator Darryl Meyer, District 17, stated SB 27 was simply a cleanup bill for minor errors and irregularities in the Securities Act of Montana. Changes within the bill were basically intended to modernize the Securities Act and put us in line with surrounding states.

List of Testifying Proponents and What Group They Represent:

Kathy Irigoin - Deputy Security Commissioner, State Auditors Office.

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Kathy Irigoin stated, the bill's purpose was to clean up minor errors and irregularities in the Securities Act of Montana.

"Section I inserts "registered" on line 5, page 6. If the word registered were not added, a person acting as a broker-dealer, without being registered as a broker-dealer, could also act as an investment advisor without becoming registered as a investment advisor."

"Section II deletes "the" on line 4, page 15. If the word "the" is not deleted, it appears that commercial

paper, that otherwise fits the other requirements in the subsection, is not essential legislation as a security unless it is sold to a certain bank or a certain insurance company. When in fact, the bank or insurance company to which the commercial paper is sold is totally irrelevant to the propose of determining whether the commercial paper is exempt from registration."

"Section III clarifies (at lines 8 through 14, page 16), that broker-dealers, or securities salesmen are exempt from registration when engaging in transactions that are exempt from registration under another statute, 30-10-105, MCA, only if that statute expressly exempts them."

"Section III (at line 23, page 18 through line 6, page 19), clarifies that registration of a broker-dealer, salesman, investment advisor, or investment advisor representative, cannot be terminated unless the commissioner approves the termination in writing. On lines 11 through 12, page 24, the order of key terms has been rearranged to conform with the order commonly used throughout the Securities Act of Montana."

"Section IV makes investment advisors responsible for paying examination costs. Already, broker-dealers and issuers are responsible for such costs. Investment advisors were inadvertently omitted from the examination cost payment requirement."

"Section V clarifies that the commissioners may not maintain an administrative or civil action for a violation of the laws requiring a broker-dealer, salesman, investment advisor, or investment advisor representative to register, unless the action is brought within two years after the failure to register occurs."

"Section V, also clarifies that the statute of limitations for an administrative or civil action for a violation, other than failure to register, is two years after the commissioners discovers the violation."

OPPONENTS: None

Questions From Committee Members: Senator Thayer inquired about the insertion of quite a little language dealing with investment advisor. Was that something inadvertently left out originally, or is this kind of a new field, that people have entered into recently to

circumvent the law?

Kathy Irigoien said "Yes, investment advisors weren't originally included in the Securities Act. The Securities Act was passed in 1956 or 59. They have been around for about eight years. When they were inserted into the code, inserting them into that particular subsection, and requiring them to take examination costs, was overlooked." (SEE EXHIBIT 2).

Closing by Sponsor: Senator Darryl Meyer stated, "I close."

DISPOSITION OF SENATE BILL 27

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Meyer moved SB 27 DO PASS. Senator Williams seconded the motion. The vote was unanimous.

DISPOSITION OF SENATE BILL 43

Discussion: Chairman Thayer asked staff member Mary McCue for the amendment necessary for SB 43, carried over from yesterday.

Mary stated she had prepared two sets of amendments as requested by the sponsor. First is the language that he suggested we insert concerning the exemption from the bond requirement. I first, took the amendment the Department of Agriculture brought yesterday and put it in our form. Number one just changes the title. The front side of Exhibit 3 states the above amendment.

Amendments and Votes:

Senator Meyer made a motion to amend SB 43. Senator McLane seconded the motion. The motion carried unanimously.

Mary McCue further explained the backside of Exhibit 3 as to the intent of SB 43. After we met yesterday, I talked to Senator Rapp-Svrcek, to the attorney of the Department of Agriculture, Tim Malloy, and to Roy Bjornson who was here yesterday. I think I confused the issue by bringing up the discussion of someone who may be selling, but not hauling. The reason I got off track, was because the person on our staff who drafted

ROLL CALL

BUSINESS & INDUSTRY COMMITTEE

DATE 1/6/89

51st LEGISLATIVE SESSION 1989

NAME	PRESENT	ABSENT	EXCUSED
<u>SENATOR DARRYL MEYER</u>	✓		
<u>SENATOR PAUL BOYLAN</u>			✓
<u>SENATOR JERRY NOBLE</u>	✓		
<u>SENATOR BOB WILLIAMS</u>	✓		
<u>SENATOR TOM HAGER</u>	✓		
<u>SENATOR HARRY MC LANE</u>	✓		
<u>SENATOR CECIL WEEDING</u>	✓		
<u>SENATOR JOHN "J.D." LYNCH</u>	✓		
<u>SENATOR GENE THAYER</u>	✓		

Each day attach to minutes.

STANDING COMMITTEE REPORT

January 6, 1989

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration SB 27 (first reading copy -- white), respectfully report that SB 27 do pass.

DO PASS

Signed: 

Gene Thayer, Chairman

EXHIBIT NO. 2

DATE 11.) 1/6/89

BILL NO. SB 27

(This sheet to be used by those testifying on a bill.) 1/6/89

NAME: Kathy M. Irzoin DATE: 1/6/89

ADDRESS: P.O. Box 4019 Helena 59604

PHONE: 444-2040

REPRESENTING WHOM? State Auditor's Office

APPEARING ON WHICH PROPOSAL: SB 27, SB 36

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENT: exhibit #2

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

WRITTEN TESTIMONY OF THE STATE AUDITOR

SENATE BILL 27

Senate Business and Industry

January 6, 1989

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 2

DATE 1/6/89

BILL NO. SB 27

Kathy Ingoin

I. Purpose

The purpose of Senate Bill 27 is to clean up minor errors and irregularities in the Securities Act of Montana. Senate Bill 27 is the Montana Securities Department's housekeeping bill.

II. Section by Section Explanation

Section 1 inserts "registered" on line 5, page 6. If the word "registered" is not added as proposed, a person acting as a broker-dealer, even though not registered as a broker-dealer, could also act as an investment without registering.

Section 2 deletes "the" on line 4, page 15. The sentence makes more sense if the word "the" is deleted. If the word "the" is not deleted, it appears that commercial paper that otherwise fits the subsection is not exempt from registration as a security unless it is sold to certain banks or insurance companies. In fact, the bank or insurance company to which the commercial is sold is irrelevant for purposes of determine whether it is exempt from registration as a security.

Section 3 clarifies (at lines 8 through 14, page 16) that a broker-dealer or securities salesman is exempt from registration when engaging in a transaction exempt from registration under 30-10-105, MCA, only if 30-10-105, MCA, expressly exempts them. For example, a broker-dealer or securities salesman must be registered when engaging in: (1) certain nonissuer distributions of outstanding securities (30-10-105(2), MCA); and (2) transactions exempt under rules like the Montana Uniform Limited Offering Exemption (ARM 6.10.120) and the Montana Investment Venture Capital Exemption (ARM 6.10.124) adopted by the commissioner (30-10-105(15), MCA).

Section 3 (at line 23, page 18, through line 6, page 19) clarifies that registration of a broker-dealer, salesman, investment adviser, or investment adviser representative may not be terminated without the express written consent of the commissioner. On lines 11 through 12, page 24, the order of key terms is rearranged to conform with the order commonly used throughout the Securities Act of Montana.

Section 4 makes investment advisers responsible for paying examination costs. Already, broker-dealers and issuers are responsible for such costs. Investment advisers were inadvertently omitted from the examination cost payment requirement.

Ex. #2
1/6/89
SB27

Section 5 clarifies that the commissioner may not maintain an administrative or civil action for a violation of the laws requiring a broker-dealer, salesman, investment adviser, or investment adviser representative to register unless it is brought within two years after the failure to register occurs. Section 5 clarifies that the statute of limitations for an administrative or civil action for a violation other than failure to register is two years after the commissioner discovers the violation.

DATE 1/6/89

COMMITTEE ON Business & Industries

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Kathy M. Irigoin	State Auditor's Office	SB 27 SB 36	X	
Stan D. Dyer	Adams' Office	SB 27 SB 36	X	
Roger McGlenn	INDEPENDENT INSURANCE AGENTS ASSOC. OF MT	SB 36	X	
Paul King	MAPP	SB 27 SB 36		
Jacqueline Dwyer	American Ins. Assoc.	SB 36	X	
Tamara Aik	Montana Ins. Dept	SB 36	X	
Bob Post	" "	SB 36	X	

(Please leave prepared stat.

STATUS SHEET

51st LEGISLATIVE SESSION

Business & Economic Development COMMITTEE

BILL NUMBER	ENTERED COM. DATE	DATE CON-SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON-CURRED IN DATE	BE NOT CON-CURRED IN DATE	BE CON-CURRED IN AS AMENDED DATE	BE NOT CON-CURRED IN AS AMENDED DATE
SB 5	2/21	2/28	3/4					3/6			
16	1	3/1	3/1					3/1			
27		3/1	3/1					3/1			
43		3/2	3/3					3/3			
76		3/2	3/2					3/2			
85		3/7	3/7					3/7			
115	✓	3/1	3/1					3/1			
HB 743	2/22	3/1	3/14 TABLED								
746	1	3/10 3/20	3/13 3/20 3/20	3/15							
SB 303		3/8	3/9					3/9			
313		3/8	3/14					3/14			
351		3/8	3/9							3/9	
369		3/8	3/9 (TABLED)								
406	✓	3/7	3/7					3/7			

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

Questions From Committee Members: None

Closing by Sponsor: Sen. Brown closed.

HEARING ON SENATE BILL 27

Presentation and Opening Statement by Sponsor:

Sen. Meyer stated that SB 27 will clean up some minor errors and irregularities in the securities act of Montana. There is a short amendment submitted by the state auditor's office.

Testifying Proponents and Who They Represent:

Jim Weg, MT Securities Department

Proponent Testimony:

See exhibit 2 for Mr. Weg's testimony.

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members: None

Closing by Sponsor: Rep. Pavlovich said the sponsor has left.

HEARING ON HOUSE BILL 736

Presentation and Opening Statement by Sponsor:

Rep. Gould stated that HB 736 will permit a person to register fleet vehicles for a 6-month period; and provides an applicability date and an effective date. I support the amendment being presented by Mr. Akey.

Testifying Proponents and Who They Represent:

Larry Akey, MT Car Rental Association
Steve Turkiewicz, MT Auto Dealers Association

Proponent Testimony:

Mr. Akey said my association is made up of small independent businesses. All the car rental agencies are independent

committee of the liquor laws book and the book of rules that the department of revenue has enacted, and I wonder if this bill fits the rules?

Questions From Committee Members: Rep. Hansen asked Mr. Tippy what the alcohol content was in dessert wines compared to the other wines. Mr. Tippy said they are 16 percent up to a maximum of 24 percent in dessert wines. The federal government has different tax breaks for wines 14 to 21 percent and another for 21 to 24 percent, I believe 20 and 21 percent is standard for dessert wines.

Closing by Sponsor: Rep. Gould said that the amendment simply deals with fairness. I appreciate your support and hope you give the bill a favorable vote.

DISPOSITION OF SENATE BILL 16

Motion: Rep. Wallin moved BE CONCURRED IN and moved the amendments.

Amendments, Discussion, and Votes: The amendments DO PASS.

Recommendation and Vote: SB 16 BE CONCURRED IN as amended unanimously.

DISPOSITION OF SENATE BILL 27

Motion: Rep. Thomas moved BE CONCURRED IN and moved the amendments.

Amendments, Discussion, and Votes: The amendment DO PASS.

Recommendation and Vote: SB 27 BE CONCURRED IN as amended unanimously.

Rep. Pavlovich said that Ronna Alexander got together with Paul and came up with this set of amendments and I will pass out copies. He asked Steve Visocan if he would like to speak on the amendments.

Mr. Visocan said the amendments will provide the confidentiality of the state fuel tax records that we provide to the department of revenue. The reason this is important, in preparing our state tax records, we provide a great deal of detail. We show how much fuel was delivered to every one of our accounts. It is important that your competitors don't know how much you sell to each of your accounts.

Rep. Glaser said he did not intend to vote for the amendment. We have enough problems with trying to hide things from the people. I don't think this is going to serve any purpose.

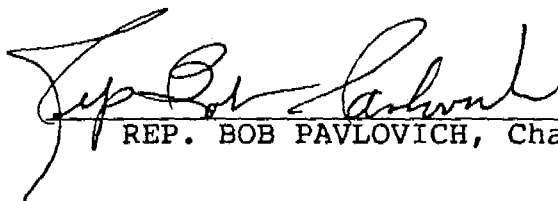
Rep. Simon said he did not plan to vote for the amendment either. There is quite a difference between individual income taxes and the records that are being provided on taxes being collected on fuel in the state of Montana.

Rep. Thomas asked if there was an overwhelming need for the public to have access to this data. Rep. Glaser asked if there was an overwhelming need for the public not to have access to the data? That is the question. Rep. Thomas asked why this data needed to be public.

Rep. Pavlovich asked if anyone would like to move the amendment? How do we feel about the amendment, we will take a straw vote. Rep. Glaser said he would rather wait a couple of days. Rep. Pavlovich said we will hold it for a couple of days.

ADJOURNMENT

Adjournment At: 11:30 a.m.



REP. BOB PAVLOVICH, Chairman

BP/sp

4803.min

DAILY ROLL CALL

BUSINESS & ECONOMIC DEVELOPMENT COMMITTEE

51th LEGISLATIVE SESSION -- 1989

Date 3 1 89

NAME	PRESENT	ABSENT	EXCUSED
PAVLOVICH, BOB	✓		
DeMARS, GENE	✓		
BACHINI, BOB	✓		
BLOTKAMP, ROB	✓		
HANSEN, STELLA JEAN	✓		
JOHNSON, JOHN	✓		
KILPATRICK, TOM	✓		
MCCORMICK, LLOYD "MAC"	✓		
STEPPLER, DON			
GLASER, BILL	✓		
KELLER, VERNON	✓		
NELSON, THOMAS	✓		
SIMON, BRUCE	✓		
SMITH, CLYDE	✓		
THOMAS, FRED	✓		
WALLIN, NORM	✓		
PAUL VERDON	✓		

ROLL CALL VOTE

BUSINESS AND ECONOMIC DEVELOPMENT

COMMITTEE

DATE 3/1/89 BILL NO. SB 27 NUMBER

NAME	AYE	NAY
Bob Pavlovich		
Bob Bachini		
Rob Blotkamp		
Gene DeMars		
Bill Glaser		
Stella Hansen		
John Johnson		
Vernon Keller		
Tom Kilpatrick		
Lloyd McCormick		
Thomas Nelson		
Bruce Simon		
Clyde Smith		
Don Stepler		
Fred Thomas		
Norm Wallin		

TALLY

16

Sue Pennington
Secretary

Bob Pavlovich
Chairman

MOTION: Rep. Thomas moved be concurred in as
amended.

STANDING COMMITTEE REPORT

March 1, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development report that SENATE BILL 27 (first reading reference copy -- blue) be concurred in as amended.

Signed: 

Robert Pavlovich, Chairman

[REP. THOMAS WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Page 21, line 10.

Strike: "or"

Following: "director"

Insert: ", person occupying a similar status or performing similar functions, or person directly or indirectly controlling the broker-dealer or investment adviser"

Amendments to Senate Bill No. 27
Second Reading Copy

For the Committee on Business and Economic Development

Prepared by Paul Verdon
March 1, 1989

1. Page 21, line 10.

Strike: "or"

Following: "director"

Insert: ", person occupying a similar status or performing
similar functions, or person directly or indirectly
controlling the broker-dealer or investment adviser"

241
3/1/80
S/B 27

Kathy M. Irigoin
State Auditor's Office
444-2040

AMENDMENT TO SENATE BILL 27

1. Page 21, line 10.

Strike: "or"

Following: "director"

Insert: ", person occupying a similar status or performing similar functions, or person directly or indirectly controlling the broker-dealer or investment adviser"

#2
3/1/89
SAB 27

WITNESS STATEMENT

NAME	Jimmy Weg	BILL NO.	Senate Bill 27
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ADDRESS P.O. Box 4009, Helena, MT 59604

WHOM DO YOU REPRESENT? Montana Securities Department, 444-2040

SUPPORT X OPPOSE AMEND X

COMMENTS: Please see attached.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

WRITTEN TESTIMONY OF THE STATE AUDITOR
SENATE BILL 27

I. Purpose

The purpose of Senate Bill 27 is to clean up minor errors and irregularities in the Securities Act of Montana. Senate Bill 27 is the Montana Securities Department's housekeeping bill.

II. Section by Section Explanation

Section 1 inserts "registered" on line 4, page 6. If the word "registered" is not added as proposed, a person acting as a broker-dealer, even though not registered as a broker-dealer, could also act as an investment without registering.

Section 2 deletes "the" on line 5, page 15. The sentence makes more sense if the word "the" is deleted. If the word "the" is not deleted, it appears that commercial paper that otherwise fits the subsection is not exempt from registration as a security unless it is sold to certain banks or insurance companies. In fact, the bank or insurance company to which the commercial is sold is irrelevant for purposes of determine whether it is exempt from registration as a security.

Section 3 clarifies (at lines 8 through 14, page 16) that a broker-dealer or securities salesman is exempt from registration when engaging in a transaction exempt from registration under 30-10-105, MCA, only if 30-10-105, MCA, expressly exempts them. For example, a broker-dealer or securities salesman must be registered when engaging in: (1) certain nonissuer distributions of outstanding securities (30-10-105(2), MCA); and (2) transactions exempt under rules like the Montana Uniform Limited Offering Exemption (ARM 6.10.120) and the Montana Investment Capital Exemption (ARM 6.10.124) adopted by the commissioner (30-10-105(15), MCA).

Section 3 (at line 23, page 18, through line 6, page 19) clarifies that registration of a broker-dealer, salesman, investment adviser, or investment adviser representative may not be terminated without the express written consent of the commissioner. On lines 11 through 12, page 24, the order of key terms is rearranged to conform with the order commonly used throughout the Securities Act of Montana.

Section 4 makes investment advisers responsible for paying examination costs. Already, broker-dealers and issuers are responsible for such costs. Investment advisers were inadvertently omitted from the examination cost payment requirement.

Section 5 clarifies that the commissioner may not maintain an administrative or civil action for a violation of the laws requiring a broker-dealer, salesman, investment adviser, or investment adviser representative to register unless it is brought within two years after the failure to register occurs. Section 5 clarifies that the statute of limitations for an administrative or civil action for a violation other than failure to register is two years after the commissioner discovers the violation.

III. Proposed amendment to SB27.

An amendment proposed to section 3 would prevent certain persons from controlling a securities broker-dealer indirectly when they clearly cannot exercise such control directly. For example, a broker-dealer can now be denied registration if its president is a convicted felon. The proposed amendment would permit the same denial of registration if the convicted felon attempted to control the broker-dealer through, for example, a holding company or similar intermediary. The proposed is taken from the Uniform Securities Act. The amendment, at page 21, line 10, would strike the word "or" and following "director" would insert ", person occupying a similar status or performing similar functions, or person directly or indirectly controlling the broker-dealer or investment adviser"

At this time, the Securities Department is witnessing an increase in the number of instances in which the principals of defunct broker-dealers are taking over other firms or forming new companies. The defunct firms from which these principals leave have often gone out of business as a result of enforcement actions instituted by state and federal authorities. To combat this "revolving door" practice as soon as possible, the Securities Department has requested that this bill become effective upon passage.

VISITORS' REGISTER

Business

COMMITTEE

HB'S 736 746

BILL NO SB'S 27 16 207 115 DATE 3/1/89

SPONSOR Mayer Warding B. Brown LynchPlease put the
bill number. Thanks

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Jimmy Weg SB 27	MT Secretary Dept.	SB 27	
Bill Leary	MT. Parkers Assn.	SB 16 Amend	
LeSean Lewis	A.A.P.	SB-115	
Roger Tippy	MT Ben & Win Wholesale	HB 743	
Tim Bergstrom	MT. STATE FIREMENS ASSOC.	SB 207	
Dee Klein	MTBOTH	SB-115	
Lyle Nagel	MT. St. Vol. Firefighters Assn	SB 207	
Marvin Barber	MT. Assassons	SB 16 X	
Hank Hudson	DFS/Hging	SB 115	
Martin J. Behner	Missoula	SB 207	✓
Robert L. Harris	Missoula	SB 207	✓
Steve Turkiewicz	MT AUTO DEALERS Assn	HB 736	
CHAD STOLANOFF	MT. Assoc. of Counties	HB 736	HB 736
Bruce Galda	Dept. of Highways	HB 736 J	
Brian McCullough	MT Landlords	SB 207	
Opwen Warren	AARP.	SB 115	
D Mackay	MT LANDLORDS	SB 207	
Tom Hoggood	Mont. Assoc. Realtors	SB 207	
Carl Harrington	Mont County Treasurer Ass	SB 16	✓

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.